

SERVED: May 15, 1998

NTSB Order No. EA-4661

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 1st day of May, 1998

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14801
v.)	
)	
MICHAEL TRUPEI,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent, pro se, has appealed from the June 24, 1997 order of Administrative Law Judge William E. Fowler, Jr., denying respondent's motion to dismiss the complaint as stale and granting the Administrator's motion for judgment on the pleadings in this proceeding.¹ By that order, the law judge affirmed the Administrator's order revoking respondent's commercial pilot certificate upon finding that respondent violated section

61.15(a) of the Federal Aviation Regulations (FARs), 14 C.F.R. § 61.15(a).² As discussed below, we deny the appeal.

The Administrator's revocation order (complaint), dated January 16, 1997, alleged that, on or about August 31, 1990, respondent was convicted in the United States District Court, Southern District of Florida, of conspiracy to possess with intent to distribute P2P and conspiracy to manufacture and distribute methamphetamine, in violation of 21 U.S.C. § 846.

Respondent's appeal of the Revocation Order, received by the NTSB's Office of Law Judges on February 18, 1997, included a statement of fact in which respondent stated that,

[o]n June 7th, 1989[,] Trupej was arrested by the DEA for an alleged dry-conspiracy with no overt act committed to distribute P2P (phenylacetone).... On April 17th, 1990[,] Trupej was found guilty by jury in the U.S. District Court for the Southern District of Florida of one count of manufactured dry-conspiracy with no overt act committed. On August 31st, 1990[,] Trupej was sentenced in the U.S. District Court for the Southern District of Florida to 23 years in federal prison.

Based on respondent's admission that he was convicted of a

(..continued)

¹The law judge's order is attached.

²FAR section 61.15(a) provides, in pertinent part:

§ 61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for--

* * * *

(2) Suspension or revocation of any certificate or rating issued under this part.

drug-related offense, namely, conspiracy to distribute P2P, the Administrator sought, and the law judge properly granted, judgment on the pleadings.³ Respondent admitted to the key allegation in the complaint and has identified no error in the law judge's decision. As the law judge noted, an airman who has been convicted of participation in a commercial drug enterprise lacks the care, judgment, and responsibility required of a certificate holder. June 24, 1997 Order at 3, citing Administrator v. Nave, NTSB Order No. EA-4257 at 2-3 (1994); Administrator v. Piro, NTSB Order No. EA-4049 at 3-4 (1993), aff'd, 66 F.3d 335 (9th Cir. 1995).⁴ As such, a hearing to determine whether respondent's conduct warranted revocation was unnecessary.

Respondent argues that since section 61.15(a) does not include "conspiracy" in the list of convictions for which suspension or revocation of an airman's certificate is authorized, and since he was not convicted of one of the "overt"

³We would strongly encourage the Administrator, however, in such cases to make the judgment of conviction part of the record.

⁴As we stated in Piro at 3-4,

[i]n our judgment, any drug conviction establishing or supporting a conclusion that the airman possessed a controlled substance for profit or commercial purposes is a flagrant one warranting revocation under the regulation. An individual who knowingly participates in a criminal drug enterprise for economic gain thereby demonstrates such a disregard for the rights and lives of others that he may reasonably be viewed as lacking the capacity to conform his conduct to the obligations created by rules designed to ensure and promote aviation safety.

drug-related offenses listed, then his certificate revocation cannot be upheld. We disagree. A conviction for conspiracy to distribute a controlled substance clearly is a conviction for a drug-related offense. See, e.g., Administrator v. Crawford, NTSB Order No. EA-4553 (1997).

Finally, respondent's argument that the complaint against him should be dismissed as stale is unavailing. A complaint that legitimately alleges issues of lack of qualification is not stale. 49 C.F.R. § 821.33. We have consistently stated that a case involving an airman's conviction for participating in a commercial drug activity involves an issue of lack of qualification, as such a conviction demonstrates that the airman lacks the care, judgment, and responsibility required of a certificate holder. See Crawford at 3; Piro, supra.

As the respondent has identified no reason to disturb the decision of the law judge, the appeal is denied.⁵

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The revocation of respondent's airman certificate shall begin 30 days from the date of service of this order.⁶

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁵Given our disposition of the matter, we need not rule on respondent's motion for an order to take depositions.

⁶For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to 14 C.F.R. § 61.19(f).